IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3961 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)
Versus
J J CHAUHAN - Respondent(s)

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Appearance :
MR HARDIK C RAWAL for Petitioner(s) : 1,
MR ND SONGARA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 28/06/2007

ORAL JUDGMENT

1. Heard Mr.H.C. Raval, learned counsel for the petitioner and Mr.N.D. Songara, learned counsel for the respondent.
2. In support of the writ application, present petitioner employer had filed letter dtd.19/12/1980 alleged to be signed by the respondent with a submission that on

19/12/1980, the respondent submitted to the Corporation that as the post of Assistant Telephone Operator was lying vacant in the Central Office, she be appointed on the said post.

3. Mr.Raval, learned counsel for the petitioner submits that the case of the preset petitioner all through out had been that the respondent workman was kept in waiting list and was appointed for two months only and immediately thereafter, the respondent made an application for her appointment as an Assistant Telephone Operator. He submits that the respondent worked for a period of 11 years and thereafter started asserting that after the retirement of one Mr.Patel, the post of Telephone Operator was lying vacant, therefore, the respondent was entitled for her regularisation on the post of Telephone Operator. According to him, the learned tribunal, without appreciating that if the post of Telephone Operator was a promotional post, the tribunal could not interfere in the matter and only direct the employer to consider the merits and demerits of the present respondent for her promotion to the higher post. In the alternative, it is submitted that in fact, the post of Telephone Operator is to be filled up by direct recruitment and as the

respondent was never appointed to the post of Telephone Operator, the tribunal could not interfere in the matter.

4. He submits that the letter dtd.19/12/1980 be taken on record and the petition be allowed.

5. Mr.Songara, learned counsel for the respondent, however, submits that the letter dtd.19/12/1980 was never placed on record, therefore, the tribunal could not see the said letter. He, however, submits that instead of taking the letter on records in the present matter, the petition be allowed, the award be set aside and the matter be remanded back to the tribunal with a liberty to the parties to produce further oral and documentary evidence in support of their contentions and counter contentions. He submits that the tribunal be also directed to provide opportunity of hearing to the parties and decide the matter afresh.

6. Mr.Raval, learned counsel for the petitioner accepts the submission made by Mr.Songar, learned counsel for the petitioner.

7. In view of the joint submissions made by the parties, the impugned award made by the tribunal is hereby quashed, the matter is remanded to the Industrial Tribunal,

Ahmedabad with a direction that it shall provide proper opportunity to the parties to lead further oral evidence and produce documentary evidence, it shall allow the parties to cross-examine the witnesses of the other-side and rebut the evidence. After the parties close their case, the learned tribunal shall hear the parties and decide the mater afresh in accordance with law.

8. The parties present in this court shall appear before the learned Industrial Tribunal, Ahmedabad on 31/7/2007 and shall produce a copy of this judgement before the said tribunal enabling the tribunal to know as to what it is required to do. The tribunal shall finally dispose of the matter within a period of nine months from the date of appearance of the parties.

9. The petition is accordingly allowed. Rule is made absolute to the extent indicated above. No costs.

10. Copy of this judgement be also sent from the Court side to the learned Industrial Tribunal, Ahmedabad.

(R.S. GARG, J.)

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